

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

HAROLD BROOKS THAYER, JR.
7301 Oakcreek Drive
Stockton, California 95207-1436

Registered Nurse License No. 417887

Respondent

Case No. A 2001-37

OAH No. 2007010440

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in this matter.

This Decision shall become effective on November 2, 2007.

IT IS SO ORDERED November 2, 2007



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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of the State of California
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8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 HAROLD BROOKS THAYER, JR.
7301 Oakcreek Drive
15 Stockton, California 95207-1436

16 Registered Nurse License No. 417887

17 Respondent.

Case No. A 2001-37

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with
20 the public interest and the responsibility of the Board of Registered Nursing (Board) of the
21 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement
22 and Disciplinary Order which will be submitted to the Board for approval and adoption as the
23 final disposition of the Accusation and Petition to Revoke Probation.

24 PARTIES

25 1. Ruth Ann Terry, M.P.H, R.N (Complainant) is the Executive Officer of
26 the Board of Registered Nursing. Complainant brought this action solely in her official capacity
27 and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
28 California, by Geoffrey S. Allen, Deputy Attorney General.

2. Respondent Harold Thayer (Respondent) is represented in this proceeding by attorney Timothy Aspinwall, whose address is Nossaman, Guthner, Knox & Elliott, LLP, 915 L Street, Suite 1000, Sacramento, California 95814.

3. On or about January 1, 1987, the Board issued Registered Nurse License Number 417887 (License) to Respondent. On November 7, 2003, pursuant to the Stipulated Settlement and Disciplinary Order adopted by the Board as its Decision in the disciplinary action titled *In the Matter of the Accusation Against Harold Brooks Thayer, Jr.*, Case Number 2002-179, the Board ordered that Respondent's License be revoked effective December 8, 2003. The revocation was stayed and Respondent was placed on probation for three (3) years subject to terms and conditions. Respondent's License will expire on September 30, 2007, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. A 2001-37 (Accusation/Petition to Revoke Probation) was filed before the Board, and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on December 6, 2006. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation. A copy of Accusation/Petition to Revoke Probation No. A 2001-37 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in the Accusation/Petition to Revoke Probation. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation/Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production

1 of documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 CULPABILITY

6 8. Respondent admits the truth of each and every charge and allegation in
7 Accusation/Petition to Revoke Probation. These admissions are made only for the purpose of
8 these proceedings and for any agency which licenses nurses, and are not valid, effective, or
9 admissible in any other legal proceedings.

10 9. Respondent agrees that his License is subject to discipline and he agrees to
11 be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

12 OTHER MATTERS

13 10. The parties understand and agree that facsimile copies of this Stipulated
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
15 force and effect as the originals.

16 DISCIPLINARY ORDER

17 In consideration of the foregoing admissions and stipulations, the parties agree
18 that the Board may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 IT IS HEREBY ORDERED that the License issued to Respondent Harold
21 Thayer, is revoked. However, the revocation is stayed and Respondent is placed on probation
22 for three (3) years on the following terms and conditions.

23 **Severability Clause.** Each condition of probation contained herein is a separate
24 and distinct condition. If any condition of this Order, or any application thereof, is declared
25 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
26 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
27 and enforceable to the fullest extent permitted by law.

28 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.

1 A full and detailed account of any and all violations of law shall be reported by Respondent to
2 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
3 compliance with this condition, Respondent shall submit completed fingerprint forms and
4 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
5 as part of the licensure application process.

6 **Criminal Court Orders:** If Respondent is under criminal court orders, including
7 probation or parole, and the order is violated, this shall be deemed a violation of these probation
8 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

9 2. **Comply with the Board's Probation Program.** Respondent shall fully
10 comply with the conditions of the Probation Program established by the Board and cooperate
11 with representatives of the Board in its monitoring and investigation of the Respondent's
12 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
13 within no more than 15 days of any address change and shall at all times maintain an active,
14 current license status with the Board, including during any period of suspension.

15 Upon successful completion of probation, Respondent's License shall be fully
16 restored.

17 3. **Report in Person.** Respondent, during the period of probation, shall
18 appear in person at interviews/meetings as directed by the Board or its designated
19 representatives.

20 4. **Residency, Practice, or Licensure Outside of State.** Periods of
21 residency or practice as a registered nurse outside of California shall not apply toward a
22 reduction of this probation time period. Respondent's probation is tolled, if and when he resides
23 outside of California. Respondent must provide written notice to the Board within 15 days of any
24 change of residency or practice outside the state, and within 30 days prior to re-establishing
25 residency or returning to practice in this state.

26 Respondent shall provide a list of all states and territories where he has ever been
27 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
28 provide information regarding the status of each license and any changes in such license status

1 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
2 new nursing license during the term of probation.

3 **5. Submit Written Reports.** Respondent, during the period of probation,
4 shall submit or cause to be submitted such written reports/declarations and verification of actions
5 under penalty of perjury, as required by the Board. These reports/declarations shall contain
6 statements relative to Respondent's compliance with all the conditions of the Board's Probation
7 Program. Respondent shall immediately execute all release of information forms as may be
8 required by the Board or its representatives.

9 Respondent shall provide a copy of this Decision to the nursing regulatory agency
10 in every state and territory in which he has a registered nurse license.

11 **6. Function as a Registered Nurse.** Respondent, during the period of
12 probation, shall engage in the practice of registered nursing in California for a minimum of 24
13 hours per week for 6 consecutive months or as determined by the Board.

14 For purposes of compliance with the section, "engage in the practice of registered
15 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
16 work in any non-direct patient care position that requires licensure as a registered nurse.

17 The Board may require that advanced practice nurses engage in advanced practice
18 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
19 Board.

20 If Respondent has not complied with this condition during the probationary term,
21 and Respondent has presented sufficient documentation of his good faith efforts to comply with
22 this condition, and if no other conditions have been violated, the Board, in its discretion, may
23 grant an extension of Respondent's probation period up to one year without further hearing in
24 order to comply with this condition. During the one year extension, all original conditions of
25 probation shall apply.

26 **7. Employment Approval and Reporting Requirements.** Respondent
27 shall obtain prior approval from the Board before commencing or continuing any employment,
28 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all

1 performance evaluations and other employment related reports as a registered nurse upon request
2 of the Board.

3 Respondent shall provide a copy of this Decision to his employer and immediate
4 supervisors prior to commencement of any nursing or other health care related employment.

5 In addition to the above, Respondent shall notify the Board in writing within
6 seventy-two (72) hours after he obtains any nursing or other health care related employment.

7 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
8 or separated, regardless of cause, from any nursing, or other health care related employment with
9 a full explanation of the circumstances surrounding the termination or separation.

10 8. **Supervision.** Respondent shall obtain prior approval from the Board
11 regarding Respondent's level of supervision and/or collaboration before commencing or
12 continuing any employment as a registered nurse, or education and training that includes patient
13 care.

14 Respondent shall practice only under the direct supervision of a registered nurse
15 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
16 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
17 are approved.

18 Respondent's level of supervision and/or collaboration may include, but is not
19 limited to the following:

20 (a) Maximum - The individual providing supervision and/or collaboration is
21 present in the patient care area or in any other work setting at all times.

22 (b) Moderate - The individual providing supervision and/or collaboration is in
23 the patient care unit or in any other work setting at least half the hours Respondent works.

24 (c) Minimum - The individual providing supervision and/or collaboration has
25 person-to-person communication with Respondent at least twice during each shift worked.

26 (d) Home Health Care - If Respondent is approved to work in the home health
27 care setting, the individual providing supervision and/or collaboration shall have person-to-
28 person communication with Respondent as required by the Board each work day. Respondent

1 shall maintain telephone or other telecommunication contact with the individual providing
2 supervision and/or collaboration as required by the Board during each work day. The individual
3 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
4 site visits to patients' homes visited by Respondent with or without Respondent present.

5 **9. Employment Limitations.** Respondent shall not work for a nurse's
6 registry, in any private duty position as a registered nurse, a temporary nurse placement agency,
7 a traveling nurse, or for an in-house nursing pool.

8 Respondent shall not work for a licensed home health agency as a visiting nurse
9 unless the registered nursing supervision and other protections for home visits have been
10 approved by the Board. Respondent shall not work in any other registered nursing occupation
11 where home visits are required.

12 Respondent shall not work in any health care setting as a supervisor of registered
13 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
14 nurses and/or unlicensed assistive personnel on a case-by-case basis.

15 Respondent shall not work as a faculty member in an approved school of nursing
16 or as an instructor in a Board approved continuing education program.

17 Respondent shall work only on a regularly assigned, identified and predetermined
18 worksite(s) and shall not work in a float capacity.

19 If Respondent is working or intends to work in excess of 40 hours per week, the
20 Board may request documentation to determine whether there should be restrictions on the hours
21 of work.

22 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall
23 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
24 than six months prior to the end of his probationary term.

25 Respondent shall obtain prior approval from the Board before enrolling in the
26 course(s). Respondent shall submit to the Board the original transcripts or certificates of
27 completion for the above required course(s). The Board shall return the original documents to
28 Respondent after photocopying them for its records.

1 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
2 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
3 amount of \$ 1,366.25. Respondent shall be permitted to pay these costs in a payment plan
4 approved by the Board, with payments to be completed no later than three months prior to the
5 end of the probation term.

6 If Respondent has not complied with this condition during the probationary term,
7 and Respondent has presented sufficient documentation of his good faith efforts to comply with
8 this condition, and if no other conditions have been violated, the Board, in its discretion, may
9 grant an extension of Respondent's probation period up to one year without further hearing in
10 order to comply with this condition. During the one year extension, all original conditions of
11 probation will apply.

12 12. **Violation of Probation.** If Respondent violates the conditions of his
13 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
14 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

15 If during the period of probation, an accusation or petition to revoke probation has
16 been filed against Respondent's license or the Attorney General's Office has been requested to
17 prepare an accusation or petition to revoke probation against Respondent's license, the
18 probationary period shall automatically be extended and shall not expire until the accusation or
19 petition has been acted upon by the Board.

20 13. **Physical Examination.** Within 45 days of the effective date of this
21 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
22 physician assistant, who is approved by the Board before the assessment is performed, submit an
23 assessment of the Respondent's physical condition and capability to perform the duties of a
24 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
25 medically determined, a recommended treatment program will be instituted and followed by the
26 Respondent with the physician, nurse practitioner, or physician assistant providing written
27 reports to the Board on forms provided by the Board.

28 If Respondent is determined to be unable to practice safely as a registered nurse,

1 the licensed physician, nurse practitioner, or physician assistant making this determination shall
2 immediately notify the Board and Respondent by telephone, and the Board shall request that the
3 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
4 shall immediately cease practice and shall not resume practice until notified by the Board.
5 During this period of suspension, Respondent shall not engage in any practice for which a
6 license issued by the Board is required until the Board has notified Respondent that a medical
7 determination permits Respondent to resume practice. This period of suspension will not apply
8 to the reduction of this probationary time period.

9 If Respondent fails to have the above assessment submitted to the Board within
10 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
11 practice until notified by the Board. This period of suspension will not apply to the reduction of
12 this probationary time period. The Board may waive or postpone this suspension only if
13 significant, documented evidence of mitigation is provided. Such evidence must establish good
14 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
15 provided. Only one such waiver or extension may be permitted.

16 **14. Participate in Treatment/Rehabilitation Program for Chemical**
17 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
18 period or shall have successfully completed prior to commencement of probation a Board-
19 approved treatment/rehabilitation program of at least six months duration. As required, reports
20 shall be submitted by the program on forms provided by the Board. If Respondent has not
21 completed a Board-approved treatment/rehabilitation program prior to commencement of
22 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled
23 in a program. If a program is not successfully completed within the first nine months of
24 probation, the Board shall consider Respondent in violation of probation.

25 Based on Board recommendation, each week Respondent shall be required to
26 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g.,
27 Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and
28 directed by the Board. If a nurse support group is not available, an additional 12-step meeting or

1 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
2 such attendance to the Board during the entire period of probation. Respondent shall continue
3 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
4 mental health examiner and/or other ongoing recovery groups.

5 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.**

6 Respondent shall completely abstain from the possession, injection or consumption by any route
7 of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except
8 when the same are ordered by a health care professional legally authorized to do so as part of
9 documented medical treatment. Respondent shall have sent to the Board, in writing and within
10 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
11 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
12 medication will no longer be required, and the effect on the recovery plan, if appropriate.

13 *Respondent shall identify for the Board a single physician, nurse practitioner or*
14 *physician assistant who shall be aware of Respondent's history of substance abuse and will*
15 *coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled*
16 *substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician*
17 *assistant shall report to the Board on a quarterly basis Respondent's compliance with this*
18 *condition. If any substances considered addictive have been prescribed, the report shall identify*
19 *a program for the time limited use of any such substances.*

20 The Board may require the single coordinating physician, nurse practitioner, or
21 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
22 addictive medicine.

23 **16. Submit to Tests and Samples.** Respondent, at his expense, shall
24 participate in a random, biological fluid testing or a drug screening program which the Board
25 approves. The length of time and frequency will be subject to approval by the Board.
26 Respondent is responsible for keeping the Board informed of Respondent's current telephone
27 number at all times. Respondent shall also ensure that messages may be left at the telephone
28 number when he is not available and ensure that reports are submitted directly by the testing

1 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
2 to the Board by the program and Respondent shall be considered in violation of probation.

3 In addition, Respondent, at any time during the period of probation, shall fully
4 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
5 tests and samples as the Board or its representatives may require for the detection of alcohol,
6 narcotics, hypnotics, dangerous drugs, or other controlled substances.

7 If Respondent has a positive drug screen for any substance not legally authorized
8 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
9 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
10 from practice pending the final decision on the petition to revoke probation or the accusation.
11 This period of suspension will not apply to the reduction of this probationary time period.

12 If Respondent fails to participate in a random, biological fluid testing or drug
13 screening program within the specified time frame, Respondent shall immediately cease practice
14 and shall not resume practice until notified by the Board. After taking into account documented
15 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
16 Board may suspend Respondent from practice pending the final decision on the petition to
17 revoke probation or the accusation. This period of suspension will not apply to the reduction of
18 this probationary time period.

19 **17. Mental Health Examination.** Respondent shall, within 45 days of the
20 effective date of this Decision, have a mental health examination including psychological testing
21 as appropriate to determine his capability to perform the duties of a registered nurse. The
22 examination will be performed by a psychiatrist, psychologist or other licensed mental health
23 practitioner approved by the Board. The examining mental health practitioner will submit a
24 written report of that assessment and recommendations to the Board. All costs are the
25 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
26 result of the mental health examination will be instituted and followed by Respondent.

27 If Respondent is determined to be unable to practice safely as a registered nurse,
28 the licensed mental health care practitioner making this determination shall immediately notify

1 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
2 office prepare an accusation or petition to revoke probation. Respondent shall immediately
3 cease practice and may not resume practice until notified by the Board. During this period of
4 suspension, Respondent shall not engage in any practice for which a license issued by the Board
5 is required, until the Board has notified Respondent that a mental health determination permits
6 Respondent to resume practice. This period of suspension will not apply to the reduction of this
7 probationary time period.

8 If Respondent fails to have the above assessment submitted to the Board within
9 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
10 practice until notified by the Board. This period of suspension will not apply to the reduction of
11 this probationary time period. The Board may waive or postpone this suspension only if
12 significant, documented evidence of mitigation is provided. Such evidence must establish good
13 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
14 provided. Only one such waiver or extension may be permitted.

15 **18. Therapy or Counseling Program.** Respondent, at his expense, shall
16 participate in an on-going counseling program until such time as the Board releases him from
17 this requirement and only upon the recommendation of the counselor. Written progress reports
18 from the counselor will be required at various intervals.

19 **19. License Surrender.** During Respondent's term of probation, if he ceases
20 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
21 probation, Respondent may surrender his License to the Board. The Board reserves the right to
22 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
23 take any other action deemed appropriate and reasonable under the circumstances, without
24 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
25 will no longer be subject to the conditions of probation.

26 Surrender of Respondent's License shall be considered a disciplinary action and
27 shall become a part of Respondent's license history with the Board. A registered nurse whose
28 license has been surrendered may petition the Board for reinstatement no sooner than the

1 following minimum periods from the effective date of the disciplinary decision:

2 (1) Two years for reinstatement of a license that was surrendered for any
3 reason other than a mental or physical illness; or

4 (2) One year for a license surrendered for a mental or physical illness.

5 ACCEPTANCE


6 I have carefully read the above Stipulated Settlement and Disciplinary Order and
7 have fully discussed it with my attorney, Timothy Aspinwall. I understand the stipulation and
8 the effect it will have on my License. I enter into this Stipulated Settlement and Disciplinary
9 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
10 of the Board.

11 DATED: 07-27-07.

12
13 
14 HAROLD THAYER
Respondent

15 I have read and fully discussed with Respondent Harold Thayer the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
17 Order. I approve its form and content.

18 DATED: 7/27/07.

19
20 
21 TIMOTHY ASPINWALL
Attorney for Respondent

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///


28 ///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 7/27/07

EDMUND G. BROWN JR., Attorney General
of the State of California



GEOFFREY S. ALLEN
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SA2006102812
10357343.wpd

Exhibit A

Accusation and Petition to Revoke Probation No. A 2001-37

ORIGINAL

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Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
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7301 Oakcreek Drive
Stockton, California 95207-1436

Registered Nurse License No. 417887

Respondent.

Case No. A 2001 37

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation and
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board
of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about January 1, 1987, the Board issued Registered Nurse License
Number 417887 to Harold Brooks Thayer, Jr. ("Respondent"). On November 7, 2003, pursuant
to the Stipulated Settlement and Disciplinary Order adopted by the Board as its Decision in the
disciplinary action titled *In the Matter of the Accusation Against Harold Brooks Thayer, Jr.*,
Case Number 2002-179, the Board ordered that Respondent's registered nurse license be revoked
effective December 8, 2003. The revocation was stayed and Respondent was placed on

1 probation for three (3) years subject to terms and conditions, as more particularly set forth in
2 paragraphs 12 through 15 below. Respondent's registered nurse license will expire on
3 September 30, 2007, unless renewed.

4 STATUTORY PROVISIONS

5 3. Business and Professions Code ("Code") section 2750 provides, in
6 pertinent part, that the Board may discipline any licensee, including a licensee holding a
7 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
8 2750) of the Nursing Practice Act.

9 4. Code section 2764 provides, in pertinent part, that the expiration of a
10 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
11 against the licensee or to render a decision imposing discipline on the license. Under Code
12 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
13 years after the expiration.

14 5. Code section 2761 states, in pertinent part:

15 The board may take disciplinary action against a certified or licensed nurse
16 or deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the
18 following:

19 (1) Incompetence, or gross negligence in carrying out usual certified or
20 licensed nursing functions . . .

21 6. California Code of Regulations, title 16, section ("Regulation") 1442
22 states:

23 As used in Section 2761 of the code, 'gross negligence' includes an
24 extreme departure from the standard of care which, under similar circumstances,
25 would have ordinarily been exercised by a competent registered nurse. Such an
extreme departure means the repeated failure to provide nursing care as required
or failure to provide care or to exercise ordinary precaution in a single situation
which the nurse knew, or should have known, could have jeopardized the client's
health or life.

26 Cost Recovery

27 7. Code section 125.3 provides, in pertinent part, that the Board may request
28 the administrative law judge to direct a licensee found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **ACCUSATION**

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 8. Respondent is subject to disciplinary action pursuant to Code section
7 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in or about April
8 2006, while employed as a registered nurse for Meadowood Health and Rehabilitation Center,
9 Stockton, California, Respondent was guilty of gross negligence in his care of a resident within
10 the meaning of Regulation 1442. Respondent, by his own admission, administered cough syrup
11 (Phenergan)^{1/} to the resident without a physician's order.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**

14 9. Respondent is subject to disciplinary action pursuant to Code section
15 2761, subdivision (a), in that in or about April 2006, while employed as a registered nurse for
16 Meadowood Health and Rehabilitation Center, Stockton, California, Respondent committed an
17 act constituting unprofessional conduct, as set forth in paragraph 8 above.

18 **PETITION TO REVOKE PROBATION**

19 10. Condition 12 of Respondent's probation states, in pertinent part, that if
20 Respondent violates the conditions of his probation, the Board after giving Respondent notice and
21 an opportunity to be heard, may set aside the stayed order and impose the stayed discipline
22 (revocation) of Respondent's license.

23 ///

24 ///

25 ///

26
27 1. "Phenergan," a brand of promethazine hydrochloride, is an antihistamine used to treat allergic symptoms.
28 It is also used to cause sedation, to assist in controlling postoperative pain, to control nausea and vomiting
(especially after surgery), and to prevent motion sickness. Phenergan is also a dangerous drug within the meaning
of Code section 4022 in that it requires a prescription under federal law.

11. Grounds exist to revoke Respondent's probation and reimpose the order of revocation of his registered nurse license in that he has violated the terms and conditions of his probation as follows:

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation Program)

12. Condition 2 of Respondent's probation states, in pertinent part, that Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board.

13. Respondent's probation is subject to revocation in that he has failed to fully comply with the terms and conditions of his Probation Program, as set forth in paragraph 15 below.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Function as a Registered Nurse)

14. Condition 6 of Respondent's probation states, in pertinent part, that Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months.

15. Respondent's probation is subject to revocation in that he has failed to engage in the practice of registered nursing for a minimum of 24 hours per week for six consecutive months.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 417887, issued to Harold Brooks Thayer, Jr.;

2. Revoking probation and reimposing the order of revocation of Registered Nurse License Number 417887, issued to Harold Brooks Thayer, Jr.;


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1 3. Ordering Harold Brooks Thayer, Jr. to pay the Board of Registered Nursing
2 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.

5 DATED: 11/20/06

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7 RUTH ANN TERRY, M.P.H., R.N.
8 Executive Officer
9 Board of Registered Nursing
10 Department of Consumer Affairs
11 State of California
12 Complainant
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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2002-179

HAROLD BROOKS THAYER, Jr.
7301 Oakcreek Drive
Stockton, CA 95207

Registered Nurse License No. 417887

Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on 12/08/2003.

IT IS SO ORDERED 11/07/2003.

Sandra L. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

BILL LOCKYER, Attorney General
of the State of California
JOEL S. PRIMES, State Bar No. 42568
Deputy Attorney General
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P.O. Box 944255
Sacramento, CA 94244-2550
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Facsimile: (916) 327-8643
Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HAROLD BROOKS THAYER, JR.
7301 Oakcreek Drive
Stockton, California 95207

Registered Nurse License No. 417887

Respondent.

Case No. AGN 2002-179

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Registered Nursing of the Department of Consumer Affairs, (hereinafter "Board"), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for its approval and adoption as the final disposition of the pending Accusation.

Respondent Harold Thayer, (hereinafter "Respondent"), and complainant, Ruth Ann Terry, R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California, through her counsel, Deputy Attorney General, Joel S. Primes, hereby stipulate that the following matters are true.

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

1 Grounds exist for the discipline of Respondent's license under Business and
2 Professions Code sections 2736, 2750, 2761(a), Health and Safety Code section 11173(a):

3 FIRST CAUSE FOR DISCIPLINE

4 (Diversion, Possession and Self-Administration
5 of Controlled Substances)

6 8. Respondent is subject to disciplinary action under Code section 2761(a)
7 on the grounds of unprofessional conduct, as defined by Code section 2762(a), in that in and
8 before November 1996, while on duty as a registered nurse in the Oncology Unit at St.
9 Joseph's Medical Center, Stockton, California, Respondent did the following:

10 a. Respondent obtained an unknown quantity of Demerol, a controlled
11 substance, by fraud, deceit, misrepresentation or subterfuge in violation of Health and Safety
12 Code section 11173(a), by withdrawing, for his own personal use, Demerol from the medical
13 center's Pyxis medication stations located at Units 4W1 and 4W2 for various patients in
14 amounts which were in excess of the doses ordered by each patient's physician and/or failing to
15 chart the administration of the Demerol in the Medication Administration Record or the nurses'
16 notes as more particularly set forth in paragraph 11 below.

17 b. Respondent possessed an unknown quantity of Demerol, a controlled
18 substance, in violation of Code 4060.

19 c. Respondent self-administered an unknown quantity of Demerol, a
20 controlled substance, without lawful authority therefor.

21 SECOND CAUSE FOR DISCIPLINE

22 (False Entries in Hospital, Patient or Other Records)

23 9. Respondent is subject to disciplinary action under Code section 2761(a)
24 on the grounds of unprofessional conduct, as defined by Code section 2762(e), in that while on
25 duty as a registered nurse in the Oncology Unit at St. Joseph's Medical Center, Stockton,
26 California, Respondent falsified, made grossly incorrect, grossly inconsistent, or unintelligible
27 entries in hospital and patient records in the following respects:

28 **Patient I.D. No. 017371162:**

- 1 a. On November 16, 1996, at 0742 hours, Respondent withdrew Demerol
2 75 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162,
3 withdrew a second dose of Demerol 75 mg from the Pyxis at Unit 4W1 for the same patient
4 (for a total of 150 mg of Demerol) at 0745 hours when the Physician's Order was for Demerol
5 75 mg intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration
6 of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise
7 failed to account for the disposition of the 150 mg of Demerol.
- 8 b. On November 16, 1996, at 1420 hours, Respondent withdrew Demerol
9 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162,
10 withdrew a second dose of Demerol 75 mg from the Pyxis at Unit 4W2 for the same patient
11 (for a total of 150 mg of Demerol) at 1435 hours when the Physician's Order was for Demerol
12 75 mg intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration
13 of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise
14 failed to account for the disposition of the 150 mg of Demerol.
- 15 c. On November 16, 1996, at 1733 hours, Respondent withdrew Demerol
16 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
17 failed to chart the administration of the Demerol in the Medication Administration Record or
18 the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.
- 19 d. On November 16, 1996, at 1945 hours, Respondent withdrew Demerol
20 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
21 failed to chart the administration of the Demerol in the Medication Administration Record or
22 the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.
- 23 e. On November 17, 1996, at 0730 hours, Respondent withdrew Demerol
24 75 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162, but
25 failed to chart the administration of the Demerol in the Medication Administration Record or
26 the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.
- 27 f. On November 17, 1996, at 1030 hours, Respondent withdrew Demerol
28 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but

failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

g. On November 17, 1996, at 1327 hours, Respondent withdrew Demerol 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, withdrew Demerol 50 mg from the Pyxis at Unit 4W2 for the same patient (for a total of 125 mg of Demerol) at 1355 hours when the Physician's Order was for Demerol 75 mg intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 125 mg of Demerol.

h. On November 17, 1996, at 1611 hours, Respondent withdrew Demerol 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of 75 mg of Demerol.

i. On November 17, 1996, at 1721 hours, Respondent withdrew Demerol 75 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

j. On November 17, 1996, at 1856 hours, Respondent withdrew Demerol 75 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, withdrew a second dose of Demerol 75 mg from the Pyxis at unit 4W2 for the same patient (for a total of 150 mg of Demerol) at 1858 hours when the Physician's Order was for Demerol 75 mg intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 150 mg of Demerol.

Patient I.D. No. 017370552:

k. On November 16, 1996, at 0922 hours, Respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but

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failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

l. On November 16, 1996, at 1251 hours, Respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No., 017370552, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

m. On November 16, 1996, at 1704 hours, Respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

n. On November 17, 1996, at 0842 hours, respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

o. On November 17, 1996, at 1217 hours, Respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

p. On November 17, 1996, at 1757 hours, Respondent withdrew Demerol 50 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

Patient I.D. No. 017279795:

q. On May 9, 1996, at 1756 hours, Respondent withdrew Demerol 75 mg, a controlled substance, from the Pyxis for Patient I.D. No. 017279795, but failed to chart the administration of the Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

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10. In the event this Stipulation is not adopted by the Board, the admissions made herein shall be null and void, and may not be used by the parties for any purpose.

11. It is understood by Respondent that, in deciding whether to adopt this Stipulation, the Board may receive oral and written communication from its staff and the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board or other persons from future participation in this or any other matter affecting Respondent. In the event this Stipulation is not adopted by the Board, the Stipulation will not become effective and may not be used for any purpose, except for this paragraph, which shall remain in effect.

WHEREFORE, it is stipulated that the Board of Registered Nursing may issue the following Decision and Order:

DECISION AND ORDER

Registered Nurse License No.: 417887 issued to Respondent, Harold Brooks Thayer, Jr., is revoked the revocation is stayed and respondent placed on probation for a period of three (3) years on the following terms and conditions:

Severability Clause - Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring the compliance with this term, Respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" x 2" photograph of himself within forty-five (45) days of the effective date of the final decision.

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1 (2) COMPLY WITH PROBATION PROGRAM - Respondent shall fully
2 comply with the terms and conditions of the Probation Program established by the Board and
3 cooperate with representatives of the Board in its monitoring and investigation of the
4 Respondent's compliance with the Probation Program. Respondent shall inform the Board in
5 writing within no more than 15 days of any address change and shall at all times maintain an
6 active, current license status with the Board, including during any period of suspension.

7 (3) REPORT IN PERSON - Respondent, during the period of probation,
8 shall appear in person at interviews/meetings as directed by the Board or its designated
9 representatives.

10 (4) RESIDENCY OR PRACTICE OUTSIDE OF STATE - Respondent
11 shall be bound by the terms and conditions of the Disciplinary Order as of its effective date.
12 However, the period of probation shall be tolled, and the terms and conditions of the
13 Disciplinary Order shall be stayed until Respondent enters the State of California to practice
14 nursing at a future date. With the exception of terms and conditions number 1, 4, and 12 set
15 forth herein, which shall not be stayed and which shall be fully complied with by Respondent
16 during the entire length of the probationary term. Respondent shall give written notice to the
17 Board of Respondent's intention to practice nursing in California thirty (30) days prior to
18 engaging in any activity requiring a registered nurse license issued by the Board. Failure to
19 comply with the notice requirements shall constitute a violation of probation and a basis for
20 revoking probation and Respondent's California registered nurse license.

21 (5) SUBMIT WRITTEN REPORTS - Respondent, during the period of
22 probation, shall submit or cause to be submitted such written reports/declarations and
23 verification of actions under penalty of perjury as required by the Board. These
24 reports/declarations shall contain statements relative to Respondent's compliance with all the
25 terms and conditions of the Board's Probation Program. Respondent shall immediately execute
26 all release of information forms as may be required by the Board or its representatives.

27 PROVIDE DECISION - Respondent shall provide a copy of this decision to the
28 nursing regulatory agency in every state and territory in which he has a registered nurse license.

1 (6) FUNCTION AS A REGISTERED NURSE - Respondent, during the
2 period of probation, shall engage in the practice of registered nursing in California for a
3 minimum of 24 hours per week for six consecutive months or as determined by the Board.

4 For purposes of compliance with the section, "engage in the practice of
5 registered nursing" may include, when approved by the Board, volunteer work as a registered
6 nurse, or work in any non-direct patient care position that requires licensure as a registered
7 nurse.

8 The Board may require that advanced practice nurses engage in advanced
9 practice nursing for a minimum of 24 hours per week for six consecutive months or as
10 determined by the Board.

11 If the Respondent has not complied with this condition during the probationary
12 term, and the Respondent has presented sufficient documentation of his good faith efforts to
13 comply with this condition, and if no other conditions have been violated, the Board, in its
14 discretion, may grant an extension of the Respondent's probation period up to one year without
15 further hearing in order to comply with this condition.

16 (7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -
17 Respondent shall obtain prior approval from the Board before commencing any employment,
18 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board
19 all performance evaluations and other employment related reports as a registered nurse upon
20 request of the Board.

21 Respondent shall provide a copy of this decision to his employer and immediate
22 supervisor prior to commencement of any nursing or other health care related employment.

23 Respondent shall notify the Board in writing seventy-two (72) hours after he
24 obtains any nursing or other health care related employment, when such employment is not as a
25 registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours
26 after he is terminated from any registered nursing, other nursing, or other health care related
27 employment with a full explanation of the circumstances surrounding the termination.

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(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the Respondent with or without Respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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1 Respondent shall not work in any health care setting as a supervisor. The board
2 may additionally restrict Respondent from supervising licensed vocational nurses and/or
3 unlicensed assistive personnel on a case-by-case basis.

4 Respondent shall not work as a faculty member in an approved school of
5 nursing or as an instructor in a Board approved continuing education program.

6 Respondent shall work only on a regularly assigned, identified and
7 predetermined worksite(s) and shall not work in a float capacity.

8 If the Respondent is working or intends to work in excess of 40 hours per week,
9 the Board may request documentation to determine whether there should be restrictions on the
10 hours of work.

11 (10) COMPLETE A NURSING COURSE(S) - Respondent shall complete
12 with an appropriate requirement as specified in the decision:

13 (a) Respondent, at his own expense, shall enroll and successfully
14 complete a course(s) relevant to the practice of registered nursing no later than six months prior
15 to the end of his probationary term; or

16 (b) Respondent shall be suspended from the practice of registered
17 nursing, until he has enrolled in and successfully completed a course(s) relevant to the practice
18 of registered nursing.

19 Respondent shall obtain prior approval from the Board before enrolling in the
20 course(s). Respondent shall submit to the Board the original transcripts or certificates of
21 completion for the above required course(s). The Board shall return the original documents to
22 Respondent after photocopying them for its records.

23 (11) COST RECOVERY - Respondent shall pay to the Board costs
24 associated with its investigation and enforcement pursuant to Business and Professions Code
25 Section 125.3 in the amount of \$5,000. Respondent shall be permitted to pay these costs in a
26 payment plan approved by the Board, with payments to be completed no later than three
27 months prior to the end of the probation term.

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(12) VIOLATION OF PROBATION - If Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard may set aside the stayed order and impose the stayed discipline (revocation) of Respondent's license.

If during the period of probation, an Accusation or Petition to Revoke Probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

(13) PHYSICAL EXAMINATION - Within a reasonable time approved by the Board, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the license physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Probation program and Respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified by the Probation Monitor. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified Respondent that a medical determination permits Respondent to resume practice.

(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of

1 probation a board-approved treatment/rehabilitation program of at least six months. As
2 required, reports shall be submitted by the program on forms provided by the Board. If
3 Respondent has not completed a Board-approved treatment/rehabilitation program prior to
4 commencement of probation, Respondent, within a reasonable time approved by the Board,
5 shall be enrolled in a program. If a program is not successfully completed within the first nine
6 months of probation, the Board shall consider Respondent in violation of probation.

7 Based on Probation Program recommendation, each week Respondent shall be
8 required to attend at least one, but no more than five 12-step recovery meetings or equivalent
9 (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as
10 approved and directed by the Board. If a nurse support groups is not available, an additional
11 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed
12 documentation confirming such attendance to the Board during the entire period of probation.
13 Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation
14 program or a licensed mental health examiner and/or other ongoing recovery groups.

15 (15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD ALTERING)
16 DRUGS - Respondent shall completely abstain from the possession, injection or consumption
17 by any route of all psychotropic (mood altering) drugs, including alcohol, except when the
18 same are ordered by a health care professional legally authorized to do so and are part of
19 documented medical treatment. Respondent shall have sent to the Board, in writing and within
20 14 days, by the prescribing physician, or dentist, a report identifying the medication, dosage,
21 the date the medication was prescribed, the Respondent's prognosis, the date the medication
22 will no longer be required, and the effect on the recovery plan, if appropriate.

23 Respondent shall identify for the Board a physician, nurse practitioner or
24 physician assistant who shall be aware of Respondent's history of substance abuse and will
25 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
26 substances or mood altering drugs. The coordinating physician, nurse practitioner, or physician
27 assistant shall report to the Board on a quarterly basis Respondent's compliance with this

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1 condition. If any substances considered addictive have been prescribed, the report shall
2 identify a program for the time limited use of any such substances.

3 The Board may require the single coordinating physician, nurse practitioner, or
4 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
5 addictive medicine.

6 (16) SUBMIT TO TESTS AND SAMPLES - Respondent, at his expense,
7 shall participate in a random, biological fluid testing or a drug screening program which the
8 Board approves. The length of time and frequency will be subject to approval of the Board.
9 The Respondent is responsible for keeping the Board informed of Respondent's current
10 telephone number at all times. Respondent shall also ensure that messages may be left at the
11 telephone number when he is not available and ensure that reports are submitted directly by the
12 testing agency to the Board, as directed. Any confirmed positive finding shall be reported
13 immediately to the Board by the program and Respondent shall be considered in violation of
14 probation.

15 In addition, Respondent, at any time during the period of probation, shall fully
16 cooperate with the Board or any of its representatives, and shall, when requested, submit to
17 such tests and samples as the Board or its representatives may require for the detection of
18 alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

19 If Respondent has a positive drug screen for any substance not legally
20 authorized and not reported to the coordinating physician, nurse practitioner, or physician
21 assistant, and the board files a Petition to Revoke Probation or an Accusation, the Board may
22 suspend Respondent from practice pending the final decision on the Petition to Revoke
23 Probation or the Accusation.

24 (17) MENTAL HEALTH EXAM/SUBSTANCE ABUSE ASSESSMENT -
25 Respondent shall, within a reasonable time approved by the Board, have a mental health
26 examination including psychological testing as appropriate to determine his capability to
27 perform the duties of a registered nurse. The examination must be performed by a license
28 psychiatrist, psychologist or other mental health practitioner, approved by the Board, who has

1 experience in the diagnosis and treatment of chemical dependency and alcoholism. The
2 examiner must submit a written narrative report of the examination. All costs are the
3 responsibility of the Respondent.

4 If Respondent is determined to be unable to practice safely as a registered nurse,
5 the licensed mental health care practitioner making the determination shall immediately cease
6 practice and may not resume practice until notified by the Probation Monitor. During the
7 period of suspension, Respondent shall not engage in any practice for which a license issued by
8 the Board is required, until the Probation Monitor has notified Respondent that a mental health
9 determination permits Respondent to resume practice.

10 If the examiner discovers that the Respondent is or has been dependant upon
11 drugs or alcohol or has had problems with drugs or alcohol (i.e., drug dependence in remission
12 or alcohol dependence in remission), then the Respondent must further comply with the
13 following additional terms and conditions of probation:

14 (18) THERAPY OR COUNSELING PROGRAM - Respondent, at his
15 expense, shall participate in an ongoing counseling program until such time as the Board
16 releases him from this requirement and only upon the recommendation of the counselor.
17 Witten progress reports from the counselor will be required at various intervals.

18 (19) LICENSE SURRENDER - During Respondent's term of probation, if he
19 ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the
20 conditions of probation, Respondent may surrender his license to the Board. The Board
21 reserves the right to evaluate Respondent's request and to exercise its discretion whether to
22 grant the request, or to take any other action deemed appropriate and reasonable under the
23 circumstances, without further hearing. Upon formal acceptance of the tendered license and
24 wall certificate, Respondent will no longer be subject to the conditions of probation.

25 Surrender of Respondent's license shall be considered a disciplinary action and
26 shall become a part of Respondent's license history with the Board. A registered nurse whose
27 license has been surrendered may petition the Board for reinstatement no sooner than the
28 following minimum periods from the effective date of the disciplinary decision:


(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

IT IS FURTHER STIPULATED AND AGREED that the terms of this Stipulation shall be subject to the acceptance of the Board of Registered Nursing. If the Board fails to accept this Stipulation, it shall be of no force or effect for either party, and the matter will be regularly set for hearing.

DATED: 6-17-03.

BILL LOCKYER, Attorney General
of the State of California


JOEL S. PRIMES
Deputy Attorney General

Attorneys for Complainant

ACCEPTANCE

I hereby state that I have read and understand the legal significance and consequence of this Stipulation, and I fully understand all of, and agree to be bound by, the terms of this document. I understand that I have certain rights under the California Administrative Procedure Act and the laws and regulations of the State of California in regard to this matter, and I knowingly and intelligently waive those rights.

I understand my right to retain legal counsel to advise me in this matter. To the extent that I have not exercised that right, I have done so knowingly and voluntarily.

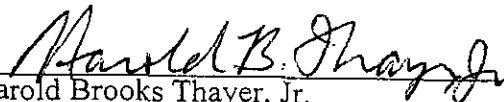
I also understand that once I sign this Stipulation, I shall not be permitted to withdraw from it unless it is rejected by the Board.

I further understand that this Stipulation may not be accepted by the California Board of Registered Nursing, in which case it is of no effect.

I have carefully read the above Stipulated Settlement and Disciplinary Order, and I fully understand the terms and conditions and other matters contained therein, I

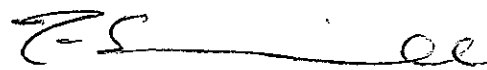
1 understand the effect this stipulation will have on my Registered Nurse License. I enter into
2 this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the
3 Disciplinary Order and Decision of the Board of Registered Nursing. I further agree that a
4 facsimile copy of this Stipulated Settlement and Disciplinary Order, including facsimile copies
5 of signatures, may be used with the same force and effect as the originals.

6 DATED: 06/12/03

7
8 
9 Harold Brooks Thayer, Jr.
10 License No. 417887
Respondent

11 DATED:

12 6/12/03

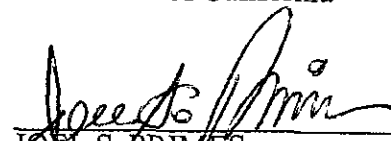
13 
14 Timothy J. Aspinwall
15 Nossaman, Guthner, Knox & Elliott, LLP
Respondent's Attorney

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby
18 respectfully submitted for consideration by the Board of Registered Nursing of the Department
19 of Consumer Affairs.

20 DATED: 6-17-03

21 BILL LOCKYER, Attorney General
22 of the State of California

23 
24 JOEL S. PRIMES
25 Deputy Attorney General

26 Attorneys for Complainant

1 BILL LOCKYER, Attorney General
of the State of California
2 JOEL S. PRIMES, State Bar No. 42568
Deputy Attorney General
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6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2002-179

13 **HAROLD BROOKS THAYER, JR.**
7301 Oakcreek Drive
14 Stockton, California 95207
Registered Nurse License No. 417887

ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
20 (Board), Department of Consumer Affairs.

21 2. On or about August 31, 1987, the Board issued Registered Nurse License
22 Number 417887 to Harold Brooks Thayer, Jr. (Respondent). The license was in full force and
23 effect at all times relevant to the charges brought herein and will expire on September 30, 2003,
24 unless renewed.

25 **STATUTORY PROVISIONS**

26 3. Section 2750 of the Business and Professions Code (Code) provides, in
27 pertinent part, that the Board may discipline any licensee, including a licensee holding a

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temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Section 2761(a) of the Code states that the board may take disciplinary action against a certified or licensed nurse for unprofessional conduct.

5. Section 2762 of the Code states, in pertinent part, that in addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

6. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

7. Health and Safety Code section 11173(a) states, in pertinent part, that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation or subterfuge.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. **Drugs**

"Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17).

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Diversion, Possession and Self-Administration
3 of Controlled Substances)

4 10. Respondent is subject to disciplinary action under Code section 2671(a) on
5 the grounds of unprofessional conduct, as defined by Code section 2762(a), in that in and before
6 November 1996, while on duty as a registered nurse in the Oncology Unit at St. Joseph's Medical
7 Center, Stockton, California, Respondent did the following:

8 a. Respondent obtained an unknown quantity of Demerol, a controlled
9 substance, by fraud, deceit, misrepresentation or subterfuge in violation of Health and Safety
10 Code section 11173(a), by withdrawing, for his own personal use, Demerol from the medical
11 center's Pyxis medication stations located at Units 4W1 and 4W2 for various patients in amounts
12 which were in excess of the doses ordered by each patient's physician and/or failing to chart the
13 administration of the Demerol in the Medication Administration Record or the nurses' notes as
14 more particularly set forth in paragraph 11 below.

15 b. Respondent possessed an unknown quantity of Demerol, a controlled
16 substance, in violation of Code 4060.

17 c. Respondent self-administered an unknown quantity of Demerol, a
18 controlled substance, without lawful authority therefor.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (False Entries in Hospital, Patient or Other Records)

21 11. Respondent is subject to disciplinary action under Code section 2761(a) on
22 the grounds of unprofessional conduct, as defined by Code section 2762(e), in that while on duty
23 as a registered nurse in the Oncology Unit at St. Joseph's Medical Center, Stockton, California,
24 Respondent falsified, made grossly incorrect, grossly inconsistent, or unintelligible entries in
25 hospital and patient records in the following respects:

26 **Patient I.D. No. 017371162:**

27 a. On November 16, 1996, at 0742 hours, Respondent withdrew Demerol 75
28 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162,

1 withdrew a second dose of Demerol 75 mg from the Pyxis at Unit 4W1 for the same patient (for
2 a total of 150 mg of Demerol) at 0745 hours when the Physician's Order was for Demerol 75 mg
3 intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration of the
4 Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to
5 account for the disposition of the 150 mg of Demerol.

6 b. On November 16, 1996, at 1420 hours, Respondent withdrew Demerol 75
7 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162,
8 withdrew a second dose of Demerol 75 mg from the Pyxis at Unit 4W2 for the same patient (for
9 a total of 150 mg of Demerol) at 1435 hours when the Physician's Order was for Demerol 75 mg
10 intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration of the
11 Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to
12 account for the disposition of the 150 mg of Demerol.

13 c. On November 16, 1996, at 1733 hours, Respondent withdrew Demerol 75
14 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
15 failed to chart the administration of the Demerol in the Medication Administration Record or the
16 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

17 d. On November 16, 1996, at 1945 hours, Respondent withdrew Demerol 75
18 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
19 failed to chart the administration of the Demerol in the Medication Administration Record or the
20 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

21 e. On November 17, 1996, at 0730 hours, Respondent withdrew Demerol 75
22 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162, but
23 failed to chart the administration of the Demerol in the Medication Administration Record or the
24 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

25 f. On November 17, 1996, at 1030 hours, Respondent withdrew Demerol 75
26 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
27 failed to chart the administration of the Demerol in the Medication Administration Record or the
28 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

1 g. On November 17, 1996, at 1327 hours, Respondent withdrew Demerol 75
2 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162,
3 withdrew Demerol 50 mg from the Pyxis at Unit 4W2 for the same patient (for a total of 125 mg
4 of Demerol) at 1355 hours when the Physician's Order was for Demerol 75 mg intramuscularly
5 every 3 to 4 hours as needed for pain, failed to chart the administration of the Demerol in the
6 Medication Administration Record or the nurses notes and/or otherwise failed to account for the
7 disposition of the 125 mg of Demerol.

8 h. On November 17, 1996, at 1611 hours, Respondent withdrew Demerol 75
9 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162, but
10 failed to chart the administration of the Demerol in the Medication Administration Record or the
11 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

12 i. On November 17, 1996, at 1721 hours, Respondent withdrew Demerol 75
13 mg, a controlled substance, from the Pyxis at Unit 4W2 for Patient I.D. No. 017371162, but
14 failed to chart the administration of the Demerol in the Medication Administration Record or the
15 nurses notes and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

16 j. On November 17, 1996, at 1856 hours, Respondent withdrew Demerol 75
17 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017371162,
18 withdrew a second dose of Demerol 75 mg from the Pyxis at Unit 4W2 for the same patient (for
19 a total of 150 mg of Demerol) at 1858 hours when the Physician's Order was for Demerol 75 mg
20 intramuscularly every 3 to 4 hours as needed for pain, failed to chart the administration of the
21 Demerol in the Medication Administration Record or the nurses notes and/or otherwise failed to
22 account for the disposition of the 150 mg of Demerol.

23 **Patient I.D. No. 017370552:**

24 k. On November 16, 1996, at 0922 hours, Respondent withdrew Demerol 50
25 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
26 failed to chart the administration of the Demerol in the Medication Administration Record or the
27 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

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1 l. On November 16, 1996, at 1251 hours, Respondent withdrew Demerol 50
2 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
3 failed to chart the administration of the Demerol in the Medication Administration Record or the
4 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

5 m. On November 16, 1996, at 1704 hours, Respondent withdrew Demerol 50
6 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
7 failed to chart the administration of the Demerol in the Medication Administration Record or the
8 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

9 n. On November 17, 1996, at 0842 hours, Respondent withdrew Demerol 50
10 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
11 failed to chart the administration of the Demerol in the Medication Administration Record or the
12 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

13 o. On November 17, 1996, at 1217 hours, Respondent withdrew Demerol 50
14 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
15 failed to chart the administration of the Demerol in the Medication Administration Record or the
16 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

17 p. On November 17, 1996, at 1757 hours, Respondent withdrew Demerol 50
18 mg, a controlled substance, from the Pyxis at Unit 4W1 for Patient I.D. No. 017370552, but
19 failed to chart the administration of the Demerol in the Medication Administration Record or the
20 nurses notes and/or otherwise failed to account for the disposition of the 50 mg of Demerol.

21 **Patient I.D. No. 017279795:**

22 q. On May 9, 1996, at 1756 hours, Respondent withdrew Demerol 75 mg, a
23 controlled substance, from the Pyxis for Patient I.D. No. 017279795, but failed to chart the
24 administration of the Demerol in the Medication Administration Record or the nurses notes
25 and/or otherwise failed to account for the disposition of the 75 mg of Demerol.

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1 PRAYER

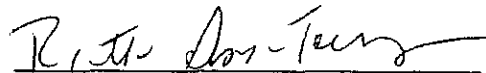
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 417887, issued
5 to Harold Brooks Thayer, Jr.;

6 2. Ordering Harold Brooks Thayer, Jr. to pay the Board of Registered
7 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
8 Business and Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 6/26/02.

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12 
13 RUTH ANN TERRY, M.P.H., R.N.
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California

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27 Complainant